

**Reserved On:-** 24.08.2021

**Delivered On:-** 01.09.2021

**Case :-** WRIT - A No. - 20137 of 2010

**Petitioner :-** Smt. Saroj Porwar

**Respondent :-** Jugal Kishore And Another

**Counsel for Petitioner :-** K. M. Garg, Akank Kumar Jain, Pramod Kumar Jain, Rahul Srivastava, Rakesh Kumar Garg, Sanjay Kumar Jain

**Counsel for Respondent :-** Madhav Jain

**Hon'ble Siddharth, J.**

1. Heard Sri Pramod Kumar Jain, learned Senior Counsel assisted by Sri Rakesh Kumar Garg, learned counsel for the petitioner and Sri Shashi Nandan, learned Senior Counsel assisted by Sri Madhav Jain, learned counsel for the respondents.
2. This writ petition has been filed praying for quashing of the judgment and order dated 16.01.2010 passed by Additional District Judge, Court No. 5, Firozabad in P.A. Appeal No. 65 of 2008 (Jugal Kishore vs. Smt. Saroj Porwar).
3. Petitioner filed a Release Application under Section 21(1)(a) of U.P. Act No. 13 of 1972 against the respondents for the release of the shop in question before Prescribed Authority, Firozabad which was registered as P.A. Case No. 13 of 2007. It was filed on the ground of bonafide need and comparative hardship pleading that the shop in question is required for daughter-in-law of petitioner, Dr. Preeti Chaturvedi, who is a doctor by profession and she wants to start a clinic in the shop in question. Her need is bonafide, genuine and pressing. The petitioner has no other property in vacant position in which she could establish her daughter-in-law and get

her clinic started. Her daughter-in-law is doing nothing due to non-availability of any shop. The shop in question is situate in the city and the same is completely suitable for the purpose of clinic. The factum of comparative hardship is also in favour of petitioner. The respondents have other properties i.e., shop at Gandhi Park Crossing. It was further pleaded that the daughter-in-law of the petitioner has right to open a clinic being a qualified doctor. On several occasions the petitioner and her husband had requested to the respondents to vacate the shop in question but the respondents have not complied, as such release application was filed.

4. Respondents filed their written statement pleading therein that shop in question is small in size and not suitable for the purpose of a clinic. The need set up is not bonafide and the clinic can be opened on the ground floor of the residential house of petitioner which is situate in Mohalla Krishna Pada and is double storied. It was further stated that husband of petitioner has two shops in Sadar Market. In one shop he is doing the business of Sarrafa and in another the business under the name and style C.V. Communication. It was further stated in the written statement that the shop at Gandhi Park Crossing is a tenanted shop in which the respondent no. 2 is doing business.

5. The Prescribed Authority after hearing both the parties and after considering the entire evidence on record allowed the release application vide judgment and order dated 18.07.2008 and directed the respondents to vacate the shop in question within two months. The Prescribed Authority recorded categorical finding that the need of landlord is genuine and bonafide. The comparative hardship is in favour of the petitioner and both the respondents are joint tenants in the shop in question, after the death of their father, who was the tenant in the shop in question.

6. On being aggrieved by the judgment and order passed by learned

Prescribed Authority, the respondent no. 1 filed an appeal in the court of learned District Judge, Firozabad. However, respondent no. 2 has not filed any appeal against the judgment and order of learned Prescribed Authority, as such the judgment and order passed by the learned Prescribed Authority has become final against the respondent no. 2. The said appeal was numbered as P.A. Appeal No. 65 of 2008.

7. The learned Additional District Judge, Court No. 5, Firozabad by judgment and order dated 16.01.2010 allowed the appeal and set aside the judgment and order of Prescribed Authority and rejected the Release Application of petitioner.

8. Learned counsel for the petitioner has submitted that the judgment and order dated 16.01.2010 passed by the learned appellate court is wholly illegal, arbitrary and unwarranted in law as such deserves to be quashed by this Court.

9. The finding of the court below that the petitioner could open the clinic for her daughter-in-law in her residential house of Mohalla Krishnapada is wholly baseless and arbitrary in as much as the said house is residential house in which petitioner is living with her family on the ground floor as well as first floor. The petitioner and her husband are very old persons and not in a position to live alone on the first floor. They are suffering from various diseases of heart, etc. The petitioner has undergone the surgery of brain-tumor and her right leg has been effected. She is not in a position to live on the first floor. Further the said house is situated in interior in a narrow lane and is not suitable for a doctor's clinic. However, court below has observed that in the said shop P.C.O is running under the name and style of C.V. Communication and it is not in a vacant position.

10. Learned Senior Counsel for the respondents has submitted that the

petitioner has concealed material facts from being brought to the notice of the Prescribed Authority. The pleadings on the basis whereof release application has been filed by the petitioner were incorrect. From bare perusal of the application it is apparent that the need was set up by the petitioner for release of the shop for opening clinic of Smt. Preeti Chaturvedi, daughter-in-law of petitioner. Smt. Preeti Chaturvedi is neither the landlord of the said shop nor is the member of the 'family' defined under the Act. The release was neither sought for the benefit of the landlord nor for the benefit of family of the landlord. The petitioner has concealed the fact about availability of various other accommodations belonging to and possessed by her husband, Chandra Bhan Gupta, which are not only lying vacant but also available to them and same can be used to mitigate the alleged need of Smt. Preeti Chaturvedi. Need setup for release of the shop in question for clinic of Smt. Preeti Chaturvedi is based on false and incorrect assertion besides the same has been concocted by the petitioner and her husband to get rid of the respondent who is tenant in the shop in question. The petitioner has concealed engagement of Smt. Preeti Chaturvedi with Himalaya Institute Hospital Trust, Dehradun, where she is engaged as Demonstrator in the Department of Bio-Chemistry.

11. The petitioner concealed availability of spacious accommodation in the Kothi of Chandra Bhan Gupta situated at Ganesh Nagar, Firozabad. The said Kothi is lying vacant for want of member in the family of the petitioner. The said Kothi is double storied and is surrounded by Clinic and Nursing homes of the doctors, namely, Dr. R.S. Chaudhary, Dr. Apurva Chaturvedi, Dr. Rajeev Agarwal, Dr. S.P.S. Chauhan, Dr. P. Bhatia, Dr. Neeraj Gupta, Dr. L.N. Gupta, Dr. Ram Kishan Gupta, Dr. Tiwari and others. The petitioner and her husband instead of allowing the same to be utilized for clinic of Smt. Preeti Chaturvedi not only concealed

availability of said accommodation but assigned no reason why the said accommodations cannot be used for the purpose of her clinic. The contesting respondent on coming to know the facts aforesaid brought the same on record before Appellate Authority.

12. Smt. Preeti Chaturvedi apart from pursuing study of Master Degree in the subject of Bio-Chemistry is also working as Demonstrator in department of Bio-Chemistry with Himalaya Institute of Medical Science. She has settled herself alongwith her husband in Himalaya Institute of Medical Science, Dehradun. She has earning of her own from her engagement which is apparent from the income tax return of Smt. Preeti Chaturvedi obtained by the respondent no. 1 through internet.

13. It is wrong to contend that the respondent no. 1 ever lingered the proceeding of P.A. Case and/or adopted delaying tactics to delay disposal of said P.A. Case No. 13 of 2007. The business carried from the shop in question is the only source of sustenance of the respondent no. 1 and his family. The application for release of the shop has been filed with all false and incorrect allegations. It is wrong to contend that on account of unemployment, Smt. Preeti Chaturvedi is pursuing study of Master's degree in the subject Bio-Chemistry since the year 2008. Smt. Preeti Chaturvedi is engaged as Demonstrator with Himalaya Institute Hospital Trust and as such she with a view to improve her future prospects for her promotion on the post of Assistant/ Associate Professor she has pursued study of Master degree in the subject Bio-Chemistry.

14. Appellate Authority after taking into consideration evidence and law relied allowed the appeal and set aside the judgment and order dated 18.07.2008 passed by the Prescribed Authority in P.A. Case No. 13 of 2007 and rejected the release application filed by the petitioner.

15. After hearing the counsel for the parties, this Court is of the view that the findings of the appellate authority regarding the exhaustion of need of daughter-in-law of the petitioner, Smt. Preeti Chaturvedi after having been settled along with her family at Dehradun could not be rebutted before the appellate authority. The appellate authority has found that Smt. Preeti Chaturvedi is unlikely to return to Firozabad and pursue her profession at Firozabad. Her husband is also employed as Associate Professor at Himalaya Institute Hospital Trust at Dehradun. The tenant-respondent is having his shop of sweets in the property in dispute which is claimed by him to be his only source of livelihood. The need set-up by the petitioner for her daughter-in-law stands exhausted. Therefore, the appellate authority has rightly allowed the appeal and set aside the order of release passed by the prescribed authority. The order of the appellate authority does not suffers from any illegality and hence calls for no interference.

16. The writ petition is accordingly, *dismissed*.

**Order date:-** 01.09.2021

Rohit